RARY
T. U. S.

Office-Supreme Court, U.S.
FILED
APR 24 1962
JOHN F. DAVIS, CLERK

In the

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 75

TECON CORPORATION,
PETITIONER,

*v.*

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

## PETITION FOR WRITS OF CERTIORARI

JAMES R. BEVERLEY,
CARMEN B. HERNANDEZ,
150 Tetuan Street,
San Juan, Puerto Rico,
*Attorneys for Petitioner.*

Blanchard Printing Company, Boston, Mass. — Law Printers

# INDEX


| | Page |
|---|---|
| Opinion Below | 3 |
| Jurisdiction | 3 |
| Questions Presented | 4 |
| Statutes Involved | 7 |
| Statement | 8 |
| Argument | 13 |
| First question, case decided January 4, 1962 | 13 |
| Second question, case decided January 4, 1962 | 17 |
| First question, case decided January 19, 1962 | 26 |
| Second question, case decided January 19, 1962 | 29 |
| Conclusion | 32 |
| Appendix A | 33 |


## CITATIONS

### *Cases*


| | |
|---|---|
| *Benitez Sugar Co.* v. *Aboy, Treasurer*, 34 P.R.R. 33 | 20 |
| *Buscaglia, Treasurer*, v. *Ballester*, 162 F.2d 805 | 19, 23, 24 |
| *Commonwealth of Puerto Rico* v. *Compania De Los Ferrocarriles*, September 28, 1961 | 31 |
| *Ex Parte Bithorn*, 53 P.R.R., 556 | 16 |
| *Puerto Rico Brokerage Co., Inc.* v. *U. S.*, 71 F.2d 469; 76 F.2d 665 | 20 |
| *Quintero, et als.* v. *Morales*, 19 P.R.R. 1120 | 17 |
| *Rivera* v. *Martinez*, 26 P.R.R. 127 | 15 |
| *San Miguel & Co.* v. *Secretary of the Treasury*, 82 D.P.R. 680 (1961) | 27 |
| *Texaco Puerto Rico Inc.* v. *Treasurer*, unreported (March 2, 1961) | 24 |
| *West India Oil Company* v. *Treasurer*, 31 U.S. 20 | 18, 22 |


### STATUTES


| | |
|---|---|
| Jones Act—Organic Act of Puerto Rico, March 2, 1917 39 Stat. 951, 48 U.S.C.A. 737 | 7, 19, 20, 25 |

| | Page |
|---|---|
| Foraker Act—April 12, 1900, 31 Stat. 77, 1 LPRA 22 | 7, 19, 20 |
| Butler Act—March 4, 1927, 44 Stat. 1418 | 7, 18, 19, 20, 25 |
| Tariff Act, 1930, Section 619 | 7 |
| Joint Resolution No. 59—Legislature of Puerto Rico, approved May 5, 1930 | 7, 20 |
| Public Law No. 411, approved June 18, 1934 | 7, 20 |
| Joint Resolution No. 51, 74th. Congress, approved August 20, 1935 | 7, 20 |
| Public Law No. 600, 81st. Congress, approved July 3, 1950, 64 Stat. 314, Title 1 LPRA, 125, 126 | 7 |
| Judicial Code—Section 1258, 28 U.S.C.A. | 4, 7 |
| Public Law No. 447, 82nd. Congress, P. 26, 27 | 7 |
| Joint Resolution, July 3, 1952, 66 Stat. 327 | 7 |
| Resolution No. 34 of the Constitutional Convention, approved July 10, 1952, Title 1 LPRA, P. 134 | 7 |
| Proclamation of the Constitution of Puerto Rico, July 25, 1952, Title 1 LPRA, P. 136 | 7 |
| Section 296 of the Code of Civil Procedure of Puerto Rico 1933, Title 32 LPRA, Section 1283 | 7 |
| Paragraph 1 of Section 320 of the Code of Civil Procedure of Puerto Rico—1933, Title 32 LPRA; Section 1431 | 7, 13 |
| Section 16 8(a) of the Internal Revenue Act of Puerto Rico, No. 85, approved August 20, 1925, Section 1040 LPRA, Title 13 | 7, 26 |
| Act No. 425, My 14, 1947, 13 L.P.R.A. 1040 | 7, 27, 28 |
| Law No. 59 of June 10, 1955 | 7, 27 |
| Rule 32 Federal Rules of Civil Procedure | 6, 30 |
| Constitution of the Commonwealth of Puerto Rico, Article 5, Section 6 | 6 |
| Rule 43—Rules of Civil Procedure | 6, 30, 31 |
| Internal Revenue Act of Puerto Rico | 22 |
| Automobile and Transit Law, 1946 | 27 |

# In the
# Supreme Court of the United States

OCTOBER TERM, 1961.

No.

TECON CORPORATION,
PETITIONER,

*v.*

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

## PETITION FOR WRITS OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that writs of certiorari issue to review the judgments of the Supreme Court of Puerto Rico, finally entered, in the first case on January 4, 1962, and in the second case on January 19, 1962.

Both these cases arose from a claim filed by petitioner with the Secretary of the Treasury of the Commonwealth of Puerto Rico and upon denial thereof by the Secretary, with the Superior Court of San Juan, whereby the reimbursement of excises paid in the amount of $37,345.48 was

requested. Said excises were collected by the Secretary of the Treasury of Puerto Rico and paid by petitioner on different dates comprised between the year 1952 and 1953 upon the introduction into Puerto Rico of machinery, tools, equipment and parts and accessories for the same, all of which were essential and were used for the sole purpose of performing a contract for the Government of the United States in the federal area under the exclusive jurisdiction of the United States Government known as Ramey Air Force Base. The judgment rendered by the Superior Court of San Juan, Puerto Rico, from which both parties appealed, gave rise to a federal question, now sought to be reviewed through the issuance of a writ of certiorari: whether the Legislature of Puerto Rico was empowered by the Congress of the United States to authorize an excise tax upon the mere introduction of machinery, equipment and so forth into Puerto Rico, solely en route to an area under the exclusive jurisdiction of the United States which would amount under the circumstances of this case, to the levying of an import duty.

The judgments rendered by the Supreme Court of Puerto Rico in the decision of both appeals, presented a new question in addition to the one just stated: the question of the infringement of the clause contained in both the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico whereby due process of law is guaranteed to all persons. In the second case, a question of the encroachment of the legislative powers by the judiciary is present; a statute which was not in existence at the time of the occurrence of the facts which gave rise to the tax imposition cannot be applied in the decision of the case. A final question to be also considered in this case is whether the Supreme Court of Puerto Rico is bound by a rule of civil procedure enacted in pursuance of constitutional provisions and which has been consistently followed

by said Court. Unless the rule is amended in the manner provided by law, the Court cannot by judicial construction alter, modify or limit its provisions.

## Opinions Below

Certified copies of the opinion delivered in this case in the Superior Court of Puerto Rico, San Juan Part, and of the opinions of the Supreme Court of Puerto Rico, not as yet reported, were filed at the office of the Clerk of this Court as appendix to the application for extension of time within which to file this petition. Both opinions of the Supreme Court of Puerto Rico bear the number 12,287.

## Jurisdiction

The judgment of the Supreme Court of Puerto Rico in the first case was entered on December 18, 1961. A motion for reconsideration was filed on December 26, 1961. The hearing requested by petitioner for oral argument of its motion for reconsideration was not granted. The decision of the Supreme Court denying the motion for reconsideration was entered on January 4, 1962. In the second case, the judgment of the Supreme Court of Puerto Rico was entered on December 27, 1961. A motion for reconsideration was filed on January 8, 1962. The decision of the Supreme Court of Puerto Rico denying the motion for reconsideration was entered on January 19, 1962. As in the first case, the hearing for oral argument was not granted. The ninety-day period within which petitioner has to file its petition for writ of certiorari in the first case, expires on April 19, 1962, while that same period in the second case expires on April 24, 1962.

On March the 30th, 1962, upon consideration of our application for an extension of time for filing petition for

writ of certiorari in the first case, this Court entered an Order signed by Associate Justice, Mr. Felix Frankfurter, whereby the time for filing said petition was extended to and including April 24, 1962.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1258, which reads:-

> "Final Judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:-
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn into question on the ground of its being repugnant to the constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the constitution, treaties, or statutes of, or commission held or authority exercised under, the United States."

In view of the fact that section 1258 became effective on August 30, 1961, petitioner, in the absence of judicial construction of said section and due to the uncertainty of its application, seeks certiorari in the first case to both the Superior Court of San Juan and the Supreme Court of Puerto Rico. It must be bourne in mind that in this case the appeal was dismissed for lack of jurisdiction, said dismissal having given rise, as above stated, to an infringement of the due process clause of the Constitution.

## Questions Presented

CASE DECIDED ON JANUARY 4, 1962

1. Whether the due process clause contained in the Constitution of the United States and in the Constitution of the Commonwealth of Puerto Rico has been violated by the dismissal for lack of jurisdiction of an appeal filed by petitioner corporation with the Supreme Court of Puerto Rico to review a judgment of the Superior Court of Puerto Rico, San Juan Part, when the statute provides a substitute method of service by mail when the offices of the attorney to whom the papers are to be served are closed and the address of his residence is not known. The requirements of the statute were complied with by petitioner corporation before it served the papers "by sending them by mail, in an envelope addressed to such (defendant's) attorney." Said compliance was admitted.

2. Whether the excises levied and collected on petitioner's machinery, equipment, houses, parts and accessories brought into Puerto Rico in transit to a U. S. reservation to be used solely in connection with the performance of a contract with the United States Government at Ramey Air Force Base constituted an illegal exaction in view of the fact that the Legislature of Puerto Rico was solely authorized by the Congress of the United States to levy and collect "internal revenue taxes", said authority not having been enlarged by the congressional enactment known as the Butler Act to permit the imposition of an import duty.

CASE DECIDED ON JANUARY 19, 1962

1. Whether the judicial branch of government may in the resolution of a case apply the provisions of a statute

not in existence at the time of the occurrence of the facts involved in the litigation. The judiciary's authority with relation to the construction of statutes does not include the authority to amend or modify, or apply statutes retroactively when not so provided nor to disregard the legislative mandate by merely ignoring or adding provisions to a statute. The establishment of the republican form of government required by the Congress of the United States for its approval of the Constitution of Puerto Rico, rests on the maintenance of a true separation of powers and this is violated when there is an encroachment of the powers of the legislative branch of government by the judiciary, or when the statutes are set aside or ignored.

2. Whether the Supreme Court of Puerto Rico, may in reviewing a case on appeal, disregard the mandate contained in paragraph 1 of Rule 43 of the Rules of Civil Procedure for The General Court of Justice of Puerto Rico, drafted in terms analogous to those of paragraph (a) of Rule 52 of the Federal Rules of Civil Procedure, to the effect that findings of fact of the lower Court shall not be set aside unless clearly erroneous. The Constitution of the Commonwealth of Puerto Rico in its Article 5, section 6, provided that the Puerto Rican Supreme Court was to adopt Civil Procedure Rules which were not to abridge substantive rights of the parties and consequently the existence of Civil Procedure Rules in our Courts has a constitutional backing which neither the judiciary nor the legislature may impair unless the modification or amendment of said rules takes place with conformity of law. The Constitution of Puerto Rico in turn was approved by the Congress of the United States after it met the congressional requirement related to the establishment of a republican form of government and to the inclusion of a Bill of Rights. The violation of a legal measure adopted

in pursuance of constitutional provisions, results in the deprivation of litigants of their day in Court.

## Statutes Involved

The statutes pertinent to this petition are sections 2 and 3 of the Jones Act, known as The Organic Act of Puerto Rico, approved March 2, 1917, 39 Stat. 951, 48 U.S.C.A. 737; section 3 of the Foraker Act of April 12, 1900, 31 Stat. 77, 1 Laws of Puerto Rico Annotated, 22; Butler Act of the Congress of the United States approved March 4, 1927, 44 Stat. 1418; Tariff Act of 1930, Section 619; Joint Resolution No. 59 of the Legislature of Puerto Rico, approved May 5, 1930; Public Law No. 411, approved June 18, 1934, providing for the ratification of Joint Resolution No. 59 of the Legislature of Puerto Rico; Joint Resolution No. 51, 74th Congress, approved August 20, 1935, providing for the amendment of Public Law No. 411; Section 2 of Public Law No. 600, 81st Congress, approved July 3, 1950, 64 Stat. 314, Title 1 L.P.R.A., pages 125 and 126; Section 1258 of the Judicial Code, 28 U.S.C.A. 1258; Public Law 447, 82nd Congress; Joint Resolution approving the Constitution of the Commonwealth of Puerto Rico, July 3, 1952, 66 Stat. 327; Resolution No. 34 of the Constitutional Convention approved July 10, 1952, Title 1, L.P.R.A., page 134; Proclamation of the Constitution of Puerto Rico, July 25, 1952, Title 1, L.P.R.A., page 136; Section 296 of the Code of Civil Procedure of Puerto Rico, 1933, Title 32, L.P.R.A., Section 1283; Paragraph 1 of Section 320 of the Code of Civil Procedure of Puerto Rico, 1933, Title 32, L.P.R.A., Section 1431; Section 16 8(a) of the Internal Revenue Act of Puerto Rico, No. 85, approved August 20, 1925 as amended by Act No. 425 approved May 14, 1947, 13 L.P.R.A., Section 1040; Law No. 59 of June 10, 1955, amending Sections 8 and 8(a) of Section 16 of Law No.

85 approved August 20, 1925, known as Internal Revenue Law of Puerto Rico.

These statutes are printed as Appendix A hereto.

## Statement

Tecon Corporation, organized under the laws of the State of Delaware, United States of America, was engaged in Puerto Rico in the years 1952 and 1953 in the performance of a contract with the United States Government for certain construction work to be accomplished solely at Ramey Air Force Base.

Under said contract, the functions to be performed by Petitioner were the construction of taxiways for military airplanes, the improvement and enlargement of their landing fields, preparation of parking areas, construction of roads in the Base, construction and preparation of storage tanks for the storage of gasoline to be used by military airplanes and so forth. Upon the introduction of the said machinery, tools, houses and equipment, the Internal Revenue Collector for Puerto Rico collected from petitioner within a period of ten days from the landing of the equipment, machinery, etc., en route to Ramey Air Force Base, excise taxes in the amount of $37,345.48 (See J. R., Appendix A).

Within the statutory term, on June 19, 1953, petitioner filed its claim with the Secretary of the Treasury for the reimbursement of the above amounts (originally the excises paid were in the sum of $31,652.01). On June 7, 1955, petitioner's claim was denied with the exception of a reimbursement in the amount of $526.63. Respondent in his denial stated that the fact that such property was to be eventually re-exported to the United States, did not prevent the payment of the excise taxes since the latter were imposed on the *introduction* of said articles into Puerto

Rico in accordance with Section 16 of the Internal Revenue Law as amended by Law No. 116 of May 12, 1943. Thus, the Secretary of the Treasury admittedly collected the excise taxes on the sole basis of the "introduction", taking as a basis for the imposition, the cost at the place of origin of said machinery and equipment.

An appeal was taken to the Superior Court of Puerto Rico, San Juan Part, to review the decision of the Secretary of the Treasury and upon the filing of the proper Pleadings and the presentation of oral and documentary evidence, the Court on February 21, 1957, rendered its Opinion and Judgment (appendix to the application for extension of time). The Court denied the reimbursement of the excises paid on machinery and equipment utilized by petitioner at Ramey Air Force Base and those paid in connection with the articles introduced to be used in an industrial installation for the processing of limestone.

The reimbursement of all excises paid by petitioner corporation in connection with the movable houses utilized at Ramey Air Force Base as dwellings for employees of the company, were granted. The Secretary of the Treasury was requested by the Court to file the corresponding computations of the excise taxes to be refunded. Said statement or computations in the amount of $14,135.55 was filed on March 26, 1957. The whole incident regarding the correctness of the amounts to be reimbursed and regarding petitioner's right to collect interest as provided by law, was not terminated until the 15th day of July, 1957, or exactly  days after both parties had filed their notices of appeal with the Supreme Court of Puerto Rico, thus depriving the Superior Court of San Juan of jurisdiction to continue proceedings in the case.

Petitioner filed its notice of appeal as to those aspects of the judgment which were unfavorable to its contentions, on April 5, 1957. Earlier that afternoon, respondent had

filed his notice of appeal in connection with the decision of the Superior Court to the effect that all excise taxes paid on the movable houses were to be reimbursed to the taxpayer. On August 19, 1957, respondent filed a motion with the Supreme Court of Puerto Rico requesting the dismissal of petitioner's appeal on the ground that personal service as required by the statute had not taken place. Petitioner filed its opposition to respondent's motion and the factual situation described in petitioner's statement in opposition to the dismissal, was accepted in its entirety by respondent, thus the question before the Court was purely a question of law. A hearing took place not only in connection with the motion to dismiss filed by respondent, but also in connection with the merits of the case. During the hearing all facts regarding service of notice of appeal, as stated by petitioner, were accepted by respondent through his attorney. On December 18, 1961, the Supreme Court rendered its opinion and judgment dismissing petitioner's appeal for lack of jurisdiction. On December 27, 1961, a second opinion and judgment was rendered by the Supreme Court reversing the decision of the Superior Court of Puerto Rico, San Juan Part, whereby the reimbursement of all excises paid by petitioner upon the introduction of its movable houses, not taxable under the Commonwealth legislation, had been authorized and granted.

Upon the dismissal by the Supreme Court of Puerto Rico, for lack of jurisdiction, of petitioner's appeal of the judgment of The Superior Court of Puerto Rico, San Juan Part, denying the reimbursement of the excise taxes paid by petitioner at the time of the introduction of its machinery, equipment, etc., arose the first constitutional question presented in this petition. This question involves an infringement of the constitutional clause which guarantees due process of law and which is contained in both Con-

stitutions: the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico. Under this clause, any litigant is entitled to its day in Court and an appeal timely filed cannot be dismissed without justification of law.

The first opportunity that petitioner had to raise this question was upon the filing of its motion for reconsideration on December 26, 1961. A certified copy of said motion was filed as an appendix for extension of time. Petitioner's motion was denied as well as the petition for oral argument.

In first presenting the second question before the Superior Court of San Juan, petitioner stated under subdivision A of paragraph 8 of the complaint, that the tax assessment on the equipment, machinery, vehicles, houses, etc. brought into Puerto Rico for the performance of the federal contract, was equivalent to a tax on imports which was forbidden by law. It was further stated under subdivision C or paragraph 8 of the complaint, that the Government of Puerto Rico had ceded the federal area on which Ramey Air Force Base was established to the Government of the United States and therefore its tax laws were not in force in the said federal area nor had the cession above referred to, in any way been revoked or amended by the Commonwealth of Puerto Rico.

In answer to the above, the Superior Court of San Juan in its opinion stated the following:-

> "And that duty is, originally and *primarily* the duty of paying *only once* excise taxes for the privilege of *use* or *consumption* within this country, of the taxed articles listed in the law. But it is obvious that, in order for the taxed article to be *used or consumed*, it previously has to be produced or brought to life, in some manner, whether through its *manufacture* or

elaboration in Puerto Rico, or through its *introduction* within the geographic limits of this island.

But the *collection* of the excise taxes for the privilege of *consumption*, would be difficult, almost impossible, in practice. And for the privilege of *use*, it would still be quite difficult. Unquestionably, in either of the above two cases, it would be more inconvenient than *collection* for the privilege of the *acquisition* for later use or consumption.

In cases where *the sales* or *transfers* are carried on outside the jurisdiction of Puerto Rico, the tax on those two incidents could not be collected unless, as demanded by our law, the payment of the excises is exacted when the merchandise affected is *introduced* into Puerto Rico.

The fact that at the time the *collection* of the excises referred to is effected within the term in which the taxpayer is obliged to *pay* them, the Secretary had in mind the incident of the *introduction*, instead of any other of the five incidents listed in the law, should not, cannot, give rise to a right to claim the refund of the payable taxes which were *paid* in compliance with statutory provisions.

In the present case the property in question was *introduced* into Puerto Rico, and after having been transferred to Tecon Corporation, was used by that enterprise in this country, even though, we reiterate, this took place within a zone which is under the exclusive jurisdiction of the Government of the United States.

Just the same as taxpayer maintains that the action of the Secretary of the Treasury in fundamentally concluding and informing that the excises the object of this suit were assessed on the 'introduction' into Puerto Rico of the taxed articles *has been equivalent*

to a collection on the *importation* of the same, it should have inferred the following: *not* that it *has been equivalent* to but that it really *was*, in accordance with law, *primarily* by reason of the *use* made of such property."

This question and the manner in which it was decided was brought to the attention of the Supreme Court of Puerto Rico during the oral argument which took place not only in connection with the motion to dismiss filed by respondent, but also in connection *with the merits of the case*. Petitioner's brief before the Supreme Court of Puerto Rico contained a complete and thorough analysis of this question.

The two questions herein presented for review with relation to the second case (Opinion and Judgment which became final on January 19, 1962) arose precisely upon the entering of said judgment. Until that time no federal questions were present in the case. These two questions will be analyzed under the next heading.

## Argument

### Argument First Question— Case Finally Decided January 4, 1962

The applicable statute in the matter of service of notice or other paper is paragraph 1 of section 320 of the Code of Civil Procedure, T.32 L.P.R.A. section 1431, which reads as follows:

Section 1431. Service of notice or other paper.

"The service of notice or other paper may be personal, by delivery to the party or attorney on whom

the service is required to be made, or it may be as follows:

> 1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof, or when there is no person in the office, by leaving them, between the hours of eight in the morning and four in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, inclosed in an envelope, into the post office, directed to such attorney."

There was no controversy as to the factual situation which compelled petitioner to utilize the substitute method of service by mail provided by the statute. On September 18, 1957 petitioner filed with the Supreme Court of Puerto Rico a statement in Opposition to the Motion to Dismiss filed by Defendant-Appellee wherein all the facts and circumstances prior to the service by mail permitted by the statute quoted above were set forth. On September 25, 1957, respondent filed a Motion with the Supreme Court of Puerto Rico in answer to petitioner's statement mentioned above, having stated the following in said Motion:

> "1—Defendant-appellee-appellant accepts, for the purposes of his Motion to Dismiss, the facts stated in the first eight pages of the Opposition above mentioned, since their existence or non-existence is completely immaterial and irrelevant to the question raised in the Motion to Dismiss".

The same situation was true with regard to the oral argument of the case. All the facts as stated by petitioner's legal representative were accepted by respondent's attorney. Petitioner's statement to the effect that upon being served after 4:00 P.M. of April the fifth of the year 1957 with copy of respondent's notice of appeal, petitioner's attorney called over the telephone the offices of the Department of Justice and talked to attorney Eulogio Riera, head of the litigation division, having announced to him that petitioner was also filing an appeal in the case notwithstanding the fact that the matter of the computations was still pending before the Superior Court, was admitted by respondent's attorney during the oral argument before the Supreme Court. It was also admitted that Mr. Riera informed petitioner's attorney that he was about to leave his office and could not wait for personal service. Not only was Mr. Riera informed of the above, but as stated in petitioner's opposition to the motion to dismiss, he promised that upon discussing the matter with the attorney in charge of the government's case he would decide whether the notice of appeal was to be withdrawn. All of the above was submitted to the Supreme Court of Puerto Rico as well as the additional facts that the offices of the Department of Justice were closed shortly after five o'clock and that petitioner's attorney did not know the residential address of Mr. Latimer or of Mr. Riera.

However it is stated in the Supreme Court's opinion that the record did not show the reasons that petitioner had to use the substitute method of service by mail. All of the above appear from the certified record of the case filed with this Court.

In the case of *Rivera* v. *Martinez*, 26 P.R.R. 127, the Supreme Court stated the following:

> "When both parties reside in the same town the appellant should not serve notice of his appeal on the defendant by mail. But for the fact that the defendant's own motion shows that he was informed in time of the taking of the appeal, this would be a sufficient ground for dismissal of the appeal".

In the present case not only respondent admitted having been informed of petitioner's appeal but no harm whatsoever could happen to him inasmuch as he filed his own notice of appeal earlier that afternoon.

In the case of *Quintero et al.* v. *Morales* 19 P.R.R. 1120 it was held:

> "If the appellants had even shown at the hearing that although they erred in serving the notice by mail the defendant's attorney had been given notice in due time of the filing of the appeal, thus complying substantially with the spirit of the law on this point, or if the defendant's attorney himself had acknowledged the service of notice, perhaps, in accordance with the doctrine laid down in the cases of *Heinlen* v. *Heilbron*, 94 Cal. 636, and *Withers* v. *Little*, 56 Cal. 372. we might overrule the motion to dismiss and decide the case on its merits."

The Supreme Court of Puerto Rico stated the following in the case of *Ex Parte Bithorn*, 53 P/R.R. 556:

> "In substituted or constructive service, the same is regarded as complete at the time of the mailing of the document and not at the time of its reception by the addressee.

* * *

> The Code of Civil procedure only requires that the service of documents be made by registered mail in the case provided for in subdivision 2 of section 320 of said code, that is, *if the service is made upon the party and his residence be not known.* In all other cases the service may be made by ordinary mail. . . . However, the jurisdiction of this court does not depend on the proof of service, but on the actual fact of such service having been made within the time and in the manner provided by law.

In the present case however, despite the respondent's admissions regarding the facts, the statute was construed as if did not provide for substituted or constructive service. Such construction deprived petitioner of its day in court and amounts to an infringement of the due process clause contained in the Constitution of the Commonwealth of Puerto Rico enacted in pursuance of and in compliance with congressional authority.

For the Supreme Court to decide cases in disregard of valid provisions of the Constitution and of the laws approved under its authority, undoubtedly presents a serious matter worthy of the consideration of this Court. A corporation which comes from the United States is entitled, as well as any individual, to its day in court and to the protection of a true republican form of government as required by the Congress.

SECOND QUESTION—CASE OF JANUARY 4, 1962.

The Treasury Department of Puerto Rico denied the reimbursement of all the excises paid on the machinery, equipment and tools brought by petitioner into Puerto Rico and utilized solely at Ramey Air Force Base in the performance of its contract with the United States Govern-

ment. Said denial as stated in the Treasurer's letter of June 7, 1955 addressed to petitioner's attorney read as follows:

> "A case similar to that of your client was submitted to the Office of Legal Services of this Department for study and consideration. In the opinion corresponding to Consultation OT-313, approved by the Acting Secretary of the Treasury, on April 28, 1952, the office of Legal Service came to the conclusion that there is nothing in the Internal Revenue Law which exempts a contractor from the payment of excises on the introduction into Puerto Rico of specialized equipment for the performance of work for an entity exempt as a dependency of the Federal Government.
>
> Said office concluded further that the fact that such property may eventually be reexported to the United States does not prevent the payment of the excises referred to, since the latter are imposed *on the introduction* of said articles into Puerto Rico, in accordance with Section 16 of the Internal Revenue Law, as amended by Act No. 116 of May 12, 1943." (Underscore supplied). See Exhibit B to the complaint, Judgment Roll.

The constitutional question raised by petitioner in connection with this point is that the Legislature of Puerto Rico was not authorized by the Butler Act of Congress (March 4, 1927) to levy an excise tax which is tantamount to the levying of a customs duty on imports. The Supreme Court of Puerto Rico is of the opinion that this power of Puerto Rico to levy a tax on articles not produced locally was judicially established on November 12, 1940, when the opinion of this Court was entered in *West India Oil Co.* v. *Treasurer*, 311 U.S. 20. It was also our Supreme Court's

contention that this doctrine was reaffirmed and enlarged as to its details by the Court of Appeals for the First Circuit, in its decision entered in the case of *Buscaglia, Treasurer* v. *Ballester*, 162 F.2nd. 805 (1947).

Petitioner submits that the above decisions have not been construed correctly. In must be borne in mind that the authority of the Legislature of Puerto Rico to levy a tax of the nature of the one involved in the present case, which not only in its operation but also in its *essence* is an import duty, was not derived from the congressional enactment known as the Butler Act. In other words, the Congress of the United States did not consent and authorize a tax on imports in the Butler Act.

By virtue of the provisions of Section 3 of the Organic Act of Puerto Rico approved on March 2, 1917 by the Congress of the United States, . . . taxes and assessments on property, *internal revenue*, and license fees, and royalties for franchises, privileges, and concessions could be imposed for the purpose of the insular and municipal governments respectively, as might be provided and defined by the Legislature of Puerto Rico.

The substantive law, that is, the law containing the authority of the Congress of the United States to levy an internal revenue tax, was enacted in 1917; it was embodied in Section 3 of the Organic Act. A tax that would not fall under the classification of property, or internal revenue, or license fees, or royalties, or privileges and concessions could not be imposed by the Legislature of Puerto Rico under the provisions of said Section 3. At a later date income taxes were included under the above classification of taxes.

Prior to the approval of the Organic Act, all matters related to the imposition of taxes were governed by the congressional enactment known as the Foraker Act of April 12, 1900 (31 Stat. 77). Section 3 of the Foraker Act insofar as it prohibited the imposition of duties on imports, was

not repealed by the Jones Act. Its provisions were maintained in effect and continued in force by virtue of the provisions of Section 58 of the Organic Act. *Benitez Sugar Co. v. Aboy, Treasurer*, 34 P.R.R. 33.

When the Congress wished to amend the rule established by Section 2 of the Foraker Act, to permit Puerto Rico to levy a custom duty on coffee, it approved legislation expressly to that effect; that in itself would be evidence that Puerto Rico has no power to levy taxes on imports. *Puerto Rico Brokerage Co. Inc.* v. *U.S.*, 71 F.(2) 469; 76 F.(2) 665. In the Tariff Act of 1930, Section 619, the Congress specifically authorized the Legislature of Puerto Rico to levy a tax on one specific product: coffee. Prior to the approval of said Tariff Act, the Legislature of Puerto Rico, by virtue of its Joint Resolution No. 59, adopted May 5, 1930, attempted to levy an import tax of ten cents per pound of coffee. At that time the Legislature was already aware of the fact that the federal statute above mentioned would later authorize such tax. The duties collected between the effective date of the local law and the date on which the Tariff Act of Congress became effective were involved in the litigation in *Puerto Rico Brokerage Co., Inc., supra*, and the Court of Customs and Patent Appeals held that it was *evident* that the Legislature of Puerto Rico did not have the power at the time (1930) it adopted the Joint Resolution to provide an import duty on coffee. Subsequently, the Congress, by Public Law No. 411 approved June 18, 1934 providing for the ratification of Joint Resolution 59 of the Legislature of Puerto Rico and by Joint Resolution No. 51, 74th. Congress, approved August 20, 1935, providing for the amendment of Public Law No. 411, expressly validated the local law definitely settling the question as to coffee.

The foregoing established that at that time (subsequent to 1927 when the Butler Act was enacted) it was not deemed

that the Legislature of Puerto Rico had any power to levy import taxes. While the authority of the Legislature of Puerto Rico to levy internal revenue taxes existed since the year 1917, in view of the difficulties of the application of the "original package" doctrine, the Congress, with the purpose of helping the Government of Puerto Rico to collect the *internal revenue taxes* which it had been previously authorized to impose, determined and provided through its 1927 enactment known as the Butler Act, that *such* internal revenue taxes could be collected as soon as the product, or ware, or merchandise was brought into the island. In other words, the Butler Act determined solely the moment of the collection of the tax which undoubtedly has to stand the test, if challenged at any time before a court of justice, of its being really an internal revenue tax, and not an import duty. We have seen that a direct legislative of Congress has been necessary when, as in the coffee case, an import duty has been levied.

The Butler Act could not convert an illegal tax, not authorized by the valid exercise of legislative authority, into an internal revenue tax. Before this enactment, certain taxable events were indispensable, to wit: the sale, the consumption, the transfer of a certain good, ware or merchandise. It is undeniable that the wares, goods or merchandise had to be within Puerto Rico forming part of the mass of goods of Puerto Rico and with the potentiality of producing wealth to the individuals dealing with it and to the community. Thus, the levying of a tax on these goods, wares or merchandise, was not to be confused with the authority of a country to impose a duty on the mere arrival of a certain product within its territorial limits.

The Congress of the United States in approving the Butler Act, had in mind that subsequently to its being *brought into the island* the product on which the internal revenue tax would operate, would be sold, transferred,

used or consumed. It did not have in mind the situation of a product where the only taxable event would be its being brought into the territorial waters of the Island with no further possibility of use or transfer or consumption.

In the decisions of this Court and of the Court of Appeals for the First Circuit dealing with this matter it will be evident that the tax upheld in each case was a tax which met all the requirements of a true internal revenue tax. In the *West India Oil* case 311 U.S. 20 (1940) this Court said:

> "The plain purport of the words of this proviso (the proviso added by the Butler amendment to Section 3 of the Organic Act) is *that any tax authorized by the Organic Act* with respect to articles of domestic production may likewise be levied with respect to imported articles 'as soon as . . . (they) . . . are manufactured, sold, used, or brought into the island' provided only that there be no tax discrimination between articles brought from the United States and foreign countries and domestic articles. (emphasis supplied). . . ."

In the *West India Oil* decision the tax in controversy was a *sales tax* on fuel oil in bond sold to vessels bound for United States or foreign ports. Said sales tax was imposed by Section 16 (a) 62 of the Internal Revenue Act of Puerto Rico as amended by Act No. 17 of June 3, 1927. This Court granted certiorari in view of the importance of the question in the administration not only of the customs laws of the United States, but also of the revenue laws of Puerto Rico. It was found by this Court that petitioner withdrew some of the oil and delivered it to vessels in Puerto Rican ports *upon sales* for use as ships' stores in the manner already indicated. In view of this factual situation this Court found authority to maintain the tax in the congressional consent to the tax given by the March 4, 1927 amendment of Section

3 of the Organic Act of Puerto Rico. After verifying that a taxable event such as the sale had taken place, it maintained the collection of the tax which according to the Butler amendment could have been collected as soon as the fuel oil was brought into the island. The delivery of the fuel oil in the *West India* case took effect *in consummation of sales* and it is precisely this circumstance the one which enabled the United States Supreme Court to maintain that the Butler Act amounted to a congressional consent to the tax.

In a case decided by the United States Court of Appeals for the First Circuit, *Buscaglia, Treasurer* v. *Ballester*, 162 F. (2nd) 805, the collection of the insular general property tax was maintained; consequently the judgment of the Supreme Court of Puerto Rico was reversed. The factual situation as stated by the U.S. Court of Appeals was as follows:

> "On that date of the assessment of this tax the merchandise had physically arrived within the territorial jurisdiction of Puerto Rico, and although not then unloaded or capable of being unloaded, it was on the stipulated facts destined to become, as in fact it later became, a part of the permanent mass of property in the Territory. On the critical date it had therefore acquired a taxable situs in Puerto Rico and in consequence the due process clause of Section 2 of the Organic Act, 39 Stat. 951, 48 U.S.C.A. Section 737, does not prevent imposition of the tax in question.
>
> * * * *
>
> But the words 'internal revenue taxes' do not describe a narrow category of taxes. They are used to describe any tax which a government may impose *except duties on imports.* That is to say, they are used to describe all taxes in general derived from in-

ternal sources as contrasted with taxes derived from external sources. . . ."

Although the U.S. Court of Appeals expressly left out in its description of the internal revenue taxes those known as duties on imports, the Supreme Court of Puerto Rico in the case of *Texaco Puerto Rico Inc., petitioner* v. *Treasurer of Puerto Rico, intervenor*, decided on March 2, 1961, now pending review by the U.S. Court of Appeals, maintained the validity, in the light of said *Ballester* decision, of a tax collected on kerosene which never became a part of Puerto Rico but was lost in the sea while being pumped into the tanks of Texaco, the petitioner. With no taxable event short of an incomplete introduction into Puerto Rico it was petitioner's contention that the tax collected by the taxing authority was an import duty prohibited by law.

The following statement from the *Buscaglia* v. *Ballester* decision, *supra*, may have brought confusion to the Supreme Court of Puerto Rico:

> ". . . even though the particular application of the *insular general property tax* to the appellee's merchandise may make that tax in its effect a duty or impost on imports, nevertheless it is a tax which Congress in the exercise of its plenary power in the premises has authorized the insular legislature to impose". (Emphasis supplied)

Because of the above langauge this decision was construed by the Supreme Court of Puerto Rico to refer and maintain the validity of precisely those duties which it left out: duties on imports. Petitioner submits that the meaning of the above statement is not that the First Circuit Court has maintained the authority of the Legislature of Puerto Rico to levy a duty on imports; there was a prior

*determination* of the nature of the tax which was validly imposed by the Legislature of Puerto Rico. The Court was referring to a *property tax* levied on property then existing, lying within the territorial jurisdiction of Puerto Rico and "capable of beng unloaded" within said jurisdiction. Thus, the statement of the Circuit Court to the effect that a tax authorized by the Organic Act, collected at a precise moment by virtue of the Butler Act, might appear to be by its particular application and by its effect a duty or impost on imports, does not mean that these—duties on imports—were in the *Ballester* case, authorized by the Legislature of Puerto Rico nor maintained by the Circuit Court. It was the *prior* finding as to the true nature and essence of the tax and its classification as a property tax, correctly considered as an internal revenue tax, what enabled the Court to maintain its collection by the fiscal authorities of Puerto Rico regardless of its effect.

We have considered at length the above decision because proceeding from the U.S. Court of Appeals for the First Circuit it was binding on the Supreme Court of Puerto Rico. When the Circuit Court excluded from the definition of internal revenue taxes the "duties on imports" it undoubtedly had in mind duties which in spite of the authority given to the Legislature of Puerto Rico by the Congress, were still forbidden because they would, under our legal system, amount under the circumstances of a case like the present one, to imposts on imports. Where the tax in question is, in *essence* and in *truth* an internal revenue duty, it makes no difference that its collection might *operate* as the collection of a customs duty. But where, as in the present case, the machinery, equipment, tools and parts and accessories are brought into Puerto Rico solely in transit to an area under the exclusive jurisdiction of the U.S. Government to be used exclusively in the performance of a contract for said government, the excise taxes having been

collected admittedly on the introduction of the machinery, equipment, etc. the failure to reimburse would amount to deprive a citizen, in this case a corporation, of its property without the due process of law.

FIRST QUESTION—CASE OF JANUARY 19, 1962

The first federal question sought to be reviewed in the second case (opinion of the Supreme Court of Puerto Rico which became final on January 19, 1962) arose precisely at the time of the entering of said opinion. Petitioner had obtained a favorable judgment from the Superior Court of Puerto Rico, San Juan Part, which held that the houses, ordered to specifications and brought by petitioner from Dallas, Texas, already equipped with beds, stoves, sinks, telephones, furnitures, toilets, and every thing that was needed to make them comfortable homes for the families of the employees at Ramey Air Force Base, were not taxable under our statutes which do not authorize excise taxes on homes. A statute *approved while this case was pending before the Supreme Court of Puerto Rico* amended subdivision 8a of Section 16 of Act No. 85 of August 20, 1925, Sect. 1040 L.P.R.A., Title 13. Prior to the amendment, as pointed out in the motion for reconsideration, the law which according to the Supreme Court imposed an excise tax on the movable houses brought by petitioner, read as follows:—

> "On all *vehicles* not self-propelling. . . . sold, used, . . . . or introduced into, Puerto Rico. . . .; Provided, that *trailers and semi-trailers* sold, transferred, or used or consumed in, or introduced into, Puerto Rico, shall be subject to a tax of (15) per cent on the selling price in Puerto Rico."

In the case of *San Miguel & Co.* v. *Secretary of the Treasury*, 82 D.P.R., 680 (1961), the Supreme Court in connection with compressors, taxed by the government said the following: "In order for them to carry on their functions they do not have to be moving. They serve their purpose on wheels as well as without wheels. . . . We are not convinced that the legislator intended to include the compressors among the *vehicles* mentioned in said subsection. When the purpose to levy a tax is not clear, the doubt should be decided in favor of not imposing the same". (Pages 683-684). (emphasis supplied.)

The Automobile and Transit Law of 1946, in force at the time of the imposition of the taxes in controversy, in defining "trailer car", said the following in Section 2(o) of its English version:

> "Trailer car shall mean a vehicle designed to carry loads on its structure and to be drawn by a motor vehicle. . . ." 9 L.P.R.A. 172.

But the Supreme Court's attention has been called, by respondent, to the new law, mentioned above, Sect. 1040 L.P.R.A., Title 13, amending Section 8a of Section 16 of the Internal Revenue Law and to the Committee Hearings and other expressions of the legislative intent at the time of the enactment of the amendment.

By the provisions of the new act, No. 59, approved June 10, 1955, said subdivision 8a of Section 16 of the Internal Revenue Law, was to read as follows:—

> "Section 1.—
>
> . . . .
>
> 8a.—Vehicles not self propelling.—
>
> On all *vehicles* not self-propelling, *including home trailers*, but not including trailers or semi-trailers,

. . . . or introduced into, Puerto Rico, a tax of ten (10) per cent on the selling price in Puerto Rico.

Section 2.— This act shall take effect the day next following its approval, but its effects shall be made retroactive to November 1, 1954.

Approved June 10, 1955."

Could the phrase "including home trailers" contained for the first time, in the 1955 amendment of the Internal Revenue Law, guide a Court of Justice in its construction of the legislative intent in Section 8a as it read from May 14, 1947 (Law 425 of 1947) to June 10, 1955?

Could any one argue that the 1955 amendment had the effect of removing retroactively the excise taxes on the trailers and semi-trailers from May 14, 1947?

The 1955 statute expressly provides that its effects shall be made retroactive to November 1, 1954. But the introduction of the movable houses in this case, took place during the years 1952 and 1953. A later legislature cannot explain or construe the meaning of a statute of an earlier legislature nor can the judicial branch of government cede to the legislature its obligation, under a republican form of government, of judicial statutory construction. The judicial branch of government cannot either, extend or enlarge the retroactivity of a statute as expressed by the legislature, to a date earlier than that provided by the legislative enactment.

The phrase included in the 1955 law "including home trailers", has to be viewed prospectively; the legislature in making not taxable in 1955 the trailers and semi-trailers, expressly included in "all vehicles not self-propelling"— the home trailers, but in this action the judiciary cannot find a justification to tax retroactively said home-trailers. On the contrary; the amendment can only show that legislative action was necessary to include "home trailers"

within the purport of section 8a of Section 16 of the Internal Revenue Law.

If this encroachment by the judiciary in the powers of the legislative branch of government were permitted, or if cases already pending judicial adjudication, were to be lost or won in the legislatures, the safeguards contained in both Constitutions relative to the due process of law, would be just mythical words and the Bill of Rights required by the Congress would be a useless document.

Petitioner is entitled to the adjudication of its rights in conformity with the provisions of the legislation in effect when the "*introduction*" of its homes into Puerto Rico was accomplished. Until 1955 no excises could be collected on homes, whether movable or not. Nor can the introduction be considered a taxable event in the light of the principles of law and of jurisprudence analyzed in this petition in the Argument of the Second Question—Case of January 4, 1962. Said argument is now submitted in support of this question arising from the judgment of January 19, 1962.

SECOND QUESTION—CASE OF JANUARY 19, 1962

The second question presented for review in the second case, also arose at the time of the judgment entered by the Supreme Court of Puerto Rico which became final on January 19, 1962, reversing the Superior Court's judgment.

The Superior Court had, in the light of the evidence presended and in view of the law as it then read, adjudged that the dwellings brought by petitioner as residences for its employees were not vehicles or trailers or semi-trailers. All the circumstances relative to the lack of suitable living quarters near Ramey Air Force Base were proven to the Court, as well as the decision taken by petitioner to order the houses capable of being transported pre-fabricated to Puerto Rico. The Superior Court Judge saw the pictures

of the exteriors and interiors of the houses; the way they were furnished and equipped with rugs, curtains, stoves, beds, telephones, etc. (See original exhibit consisting of photos attached to judgment roll). He heard the testimonies of the high officers of Tecon Corporation who lived in said houses for periods of over two years. One of the witnesses, Mr. Metcalfe, a chief engineer working for petitioner, stated that one of his children was born in the house occupied by him. The Judge was very well acquainted with the measurements of the movable houses, which made it very difficult their transportation over the roads of Puerto Rico. It was not contemplated that they should be continuously moving over these roads; it was rather a question of taking them once over said roads from the pier to Ramey Air Force Base, and then, a second time, when, upon completion of the contract, the houses were shipped back to Dallas.

The Supreme Court of Puerto Rico has consistently maintained that it is bound by the mandate contained in paragraph 1 of Rule 43 of the Rules of Civil Procedure for the General Court of Justice of Puerto Rico, analogous to paragraph (a) of Rule 52 of the Federal Rules of Civil Procedure.

The Rules of Civil Procedure were adopted by the Supreme Court, on November 15, 1957 and submitted to the Legislative Assembly on January 13, 1958; they became effective on July 31, 1958. Cumulative Pocket Supplement, for use in 1960-1961, Title 32, subtitle 2, Part IX, through Title 33 L.P.R.A. The pertinent part of said Rule 43, paragraph 1, reads as follows:—

> "In all actions the Court shall find the facts proved and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; . . . .'
>
> Findings of fact based on oral evidence shall not be

> set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . . ."

The non-compliance with Rule 43 by the Supreme Court of Puerto Rico subjects petitioner, so to speak, to a trial de novo and to the deprivation of its rights as adjudged by the presiding Judge of the lower Court. Its rights under Rule 43 arise from the obligation of the Supreme Court of Puerto Rico to adopt and observe Rules of Civil Procedure which shall not, according to Article V, Section 6 of the Constitution of the Commonwealth of Puerto Rico, approved by Congress, "abridge, enlarge or modify the substantive rights of the parties." The 82nd. Congress of the United States by its Joint Resolution of July 3, 1950, (Public Law 447) in approval of the Constitution of the Commonwealth of Puerto Rico, perpetuated this right to which all citizens, whether natural or artificial, are entitled, and which cannot be violated by any Court.

The Supreme Court of Puerto Rico was well aware of this, when in the case of *Commonwealth of Puerto Rico* v. *Compánia de los Férrocarriles* No. 12155, decided on September 28, 1961, the following:

> "It is our rule to uphold the appraisal of the evidence made by the Trial Court except in cases of manifest error, clearly arbitrary action, or prejudice. Rule 43 of the Rules of Civil Procedure". (Citations).

It must be borne in mind that Public Law 447 *supra*, was the means by which Congress availed itself for the maintenance and preservation of the rights of the citizens of the Commonwealth under a republican form of government. Constitutions do not mean any thing if the judicial branch of government is not alert as to their observance.

It is inconceivable that the Courts themselves should contribute to the weakening of the guarantees to which all individuals alike are entitled. Many republics have wonderful Constitutions; but these are just documents subject to the will of powerful men. This Court is entitled to exercise its power of supervision when fundamental rights are threatened and when there is a departure from the accepted and usual course of judicial proceedings. It falls upon the judiciary to maintain an honest republican form of government.

## Conclusion

For All the Foregoing Reasons, Petitioner requests from this Hon. Court that this petition for writs of certiorari be granted.

Respectfully submitted,

James R. Beverley,
Carmen B. Hernandez,
150 Tetuan Street,
P. O. Box 4111,
San Juan, Puerto Rico,
*Attorneys for Petitioner.*

(s) James R. Beverley
James R. Beverley

## Appendix A

SECTION 2 AND 3 OF THE JONES ACT, KNOWN AS THE ORGANIC ACT OF PUERTO RICO, APPROVED MARCH 2, 1917, 39 STAT. 951, 48 U.S.C.A. 737:

§2. (BILL OF RIGHTS; PRIVILEGES AND IMMUNITIES)

That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

* * *

§3. (TAXES AND DUTIES; PUBLIC INDEBTEDNESS)

That no export duties shall be levied or collected on exports from Puerto Rico, but taxes and assessments on property, income taxes, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law, and to protect the public credit;

BUTLER AMENDMENT—ORGANIC ACT

*And it is further provided.* That the internal revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such Legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island.

PROVIDED, That no discrimination be made between the articles imported from the United States or foreign coun-

tries and similar articles produced or manufactured in Puerto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Puerto Rican government in the collection of these taxes.—Mar. 2, 1917, c. 145, § 3, 39 Stat. 953; amended Feb. 3, 1921, c. 34, § 2, 41 Stat. 1096; Mar. 4, 1927, c. 503, § 1, 44 Stat. 1418; Aug. 26, 1937, c. 831, 50 Stat. 843; Aug. 17, 1950, c. 731, 64 Stat. 458; continued in effect July 3, 1950, c. 446, § 4, 64 Stat. 319.

SECTION 3 OF THE FORAKER ACT OF APRIL 12, 1900, 31 STAT. 77, 1 LAWS OF PUERTO RICO ANNOTATED, 22:

§3. [Interchange of merchandise with United States] That on and after the passage of this Act all merchandise coming into the United States from Puerto Rico and coming into Puerto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and in addition thereto upon articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale upon payment of a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture; such tax to be paid by internal revenue stamp or stamps to be purchased and provided by the Commissioner of Internal Revenue and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and on all articles of merchandise of United States manufacture coming into Puerto Rico in addition to the duty

above provided upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture; PROVIDED, That on and after the date when this Act shall take effect, all merchandise and articles, except coffee, not dutiable under the tariff laws of the United States, and all merchandise and articles entered into Puerto Rico free of duty under orders heretofore made by the Secretary of War, shall be admitted into the several ports thereof, when imported from the United States, free of duty, all laws or parts of laws to the contrary notwithstanding; and whenever the Legislative Assembly of Puerto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the Government of Puerto Rico, by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Puerto Rico from the United States or coming into the United States from Puerto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Puerto Rico from the United States or coming into the United States from Puerto Rico.

Apr. 12, 1900, c. 191 § 3, 31 Stat. 77.

(Section 2 of this Act related to duties on foreign imports is now covered by Section 58 of the Puerto Rican Federal Relations Act).

[J. R. No. 59]

JOINT RESOLUTION

TO IMPOSE AN IMPORT DUTY ON FOREIGN COFFEE BROUGHT INTO PORTO RICO, AND FOR OTHER PURPOSES

WHEREAS, As a result of the hurricane of September 13, 1928, the coffee industry suffered losses estimated at seventy-five per cent, and one fourth of the rural population of Porto Rico was reduced to a condition of misery;

WHEREAS, The lands devoted to the cultivation of coffee are, due to their hilly nature, unsuitable for the employment of mechanical means of cultivation, and the enforced use of manual labor increases the cost of production to such an extent that it makes it impossible to compete in price with other coffee exporting countries;

WHEREAS, The prices now prevailing in the world market are ruinous to such an essentially Porto Rican industry, and, in the absence of tariff protection, the industry would very soon disappear;

WHEREAS, An act is now pending approval by the Congress of the United States, which authorizes the Legislature of Porto Rico to impose a duty of ten cents on every pound of foreign coffee imported into Porto Rico,

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF PORTO RICO:

Section 1. From and after August 1, 1930, an import duty of ten cents a pound is hereby levied on all coffee imported into Porto Rico, such duty to be collected by the Federal Customs Service established in Porto Rico, according to such regulations as said Service may prescribe.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. This Act shall take effect as soon as any act is approved by the United States Government, whereby the Legislature of Porto Rico is authorized to impose an import duty on all coffee brought into this Island.

Approved, May 5, 1930.

H. R. 9946

A Bill

Providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico, approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the taxes and duties imposed by Joint Resolution Numbered 59, enacted by the Legislature of Puerto Rico and approved by the Governor of Puerto Rico, May 5, 1930, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of such Joint Resolution of the Puerto Rican Legislature is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed.

The above named Bill passed the House June 15th; passed the Senate June 16th; and was approved by the President June 18th, 1934. Public Law 411.

Public Resolution — No. 51 — 7th Congress

**H. J. Res. 290.**

Joint Resolution

To amend an act entitled "An Act providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico," approved June 18, 1934.

Whereas in enacting the Act approved June 18, 1934, ratifying the taxes and duties imposed by Joint Resolution Numbered 59 enacted by the Legislature of Puerto Rico, and approved by the Governor of Puerto Rico May 5, 1930, the Congress understood and intended in

ratifying such Joint Resolution Numbered 59 of the Legislature of Puerto Rico that the "import duty" thereby and by subsequent acts of the Legislature of Puerto Rico "levied on all coffee imported into Puerto Rico" included and was intended to be levied upon all coffee brought into Puerto Rico whether from a foreign country or from any States, Territory, District or possession of the United States, or other place subject to its jurisdiction: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of Congress entitled "An Act providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico, approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico," approved June 18, 1934, be, and it is hereby, amended so as to read as follows:

> "That the taxes and duties imposed by the Legislature of Puerto Rico by Joint Resolution Numbered 59 approved by the Governor of Puerto Rico May 5, 1930, and by Act Numbered 7 approved by the Governor April 9, 1934, including therein such taxes and duties on coffee heretofore or hereafter brought into Puerto Rico from any State or Territory or district or possession of the United States, or other place subject to the jurisdiction of the United States, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of either of said acts of the Puerto Rican Legislature, including such taxes and duties on coffee heretofore or hereafter brought into Puerto Rico from any State, Territory, district or possession of the United States, is legalized, ratified, and confirmed

"as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed."

Approved, August 20, 1935.

PUBLIC LAW No. 600, 81st. CONGRESS: (Approved July 3, 1950); 64 Stat. 314, Title 1 LPRA, pp. 125 & 126:

"AN ACT TO PROVIDE FOR THE ORGANIZATION OF A CONSTITUTIONAL GOVERNMENT BY THE PEOPLE OF PUERTO RICO."

* * *

SEC. 2. This Act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum to be held in accordance with the laws of Puerto Rico. Upon the approval of this Act, by a majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights,"

PUBLIC LAW 447, 82d CONGRESS: JOINT RESOLUTION APPROVING THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO WHICH WAS ADOPTED BY THE PEOPLE OF PUERTO RICO ON MARCH 3, 1952.

WHEREAS the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950, was adopted by the Congress as a compact with the people of Puerto Rico, to became operative upon its approval by the people of Puerto Rico: and

WHEREAS the people of Puerto Rico overwhelmingly approved such Act in a referendum held on June 4, 1951, and a constitution for the Commonwealth of Puerto Rico was

drafted by a constitutional convention held as provided by such Act from September 17, 1951, to February 6, 1952; and

WHEREAS such constitution was adopted by the people of Puerto Rico, by a vote of three hundred seventy-four thousand six hundred and forty-nine to eighty-two thousand nine hundred and twenty-three, in a referendum held on March 3, 1952; and

WHEREAS the President of the United States has declared that the constitution of the Commonwealth of Puerto Rico conforms fully with the applicable provisions of such Act of July 3, 1950, and of the Constitution of the United States, that it contains a bill of rights, and provides for a republican form of government, and has transmitted the constitution of the Commonwealth of Puerto Rico to the Congress for its approval; and

WHEREAS the Congress has considered the constitution of the Commonwealth of Puerto Rico and has found it duly to conform to the above requirements: Therefore be it

RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED. That the constitution of the Commonwealth of Puerto Rico which was drafted by the selected delegates of the Constitutional Convention of Puerto Rico and adopted by the people of Puerto Rico in a referendum of March 3, 1952, in accordance with the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950 (64 Stat. 319; 48 U.S.C., secs. 731b-731e), is hereby approved by the Congress of the United States, except section 20 of article II of said constitution: PROVIDED, That section 5 of article II thereof shall have no force and effect until amended by the people of Puerto Rico under the procedure prescribed by article VII of the constitution of the Commonwealth of Puerto Rico by adding to such section 5 the following declaration: "Compulsory attendance at elementary public

schools to the extent permited by the facilities of the state as herein provided shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices": PROVIDED FURTHER, That except for the purpose of adopting the amendments to section 5 of article II and to section 3 of article VII as herein provided, article VII of said constitution likewise shall have no force and effect until amended by the people of Puerto Rico under the terms of said article by adding to section 3 of article VII the following new sentence: "Any amendment or revision of this constitution shall be consistent with the resolution enacted by the Congress of the United States approving this constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and with Public Law 600, Eighty-first Congress, adopted in the nature of a compact": AND PROVIDED FURTHER, That the constitution of the Commonwealth of Puerto Rico hereby approved shall become effective when the Constitutional Convention of Puerto Rico shall have declared in a formal resolution its acceptance in the name of the people of Puerto Rico of the conditions of approval herein contained, and when the Governor of Puerto Rico, being duly notified by the proper officials of the Constitutional Convention of Puerto Rico that such resolution of acceptance has been formally adopted, shall issue a proclamation to that effect.

(J.R. July 3, 1952, c. 567, 66 Stat. 327.)

RESOLUTION NO. 34 OF CONSTITUTIONAL CONVENTION: TO ACCEPT, IN BEHALF OF THE PEOPLE OF PUERTO RICO, THE CONDITIONS OF APPROVAL OF THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO PROPOSED BY THE EIGHTY-SECOND CONGRESS OF THE UNITED STATES THROUGH PUBLIC LAW 447

APPROVED JULY 3, 1952

WHEREAS, the Constitution of the Commonwealth of Puerto Rico, as adopted by the people of Puerto Rico in a

referendum held March 3, 1952, was submitted to Congress by the President of the United States pursuant to the terms of the compact referred to in Public Law 600, approved by the President of the United States July 3, 1950 and by the People of Puerto Rico at the referendum of June 4, 1951;

WHEREAS, the Congress of the United States has approved the Constitution of the Commonwealth of Puerto Rico to be operative if the Constitutional Convention accepts the terms of said Public Law 447 of July 3, 1952, which reads as follows: [Quoting in English and Spanish Public Law 447, 82nd Congress, set out above].

WHEREAS, as it appears from the report of the Bill of Rights Committee of the Constitutional Convention, from the debates in the Constitutional Convention and from the explanations to the people in connection with Section 20 of Article II of the Constitution of the Commonwealth of Puerto Rico, it has always been the purpose of the people of Puerto Rico and their representatives in the Constitutional Convention to give to said Section the sole scope of a declaration of human rights, whose value before God and before life is evident, and toward whose realization the State may and should cooperate through equitable measures of a public nature that will encourage private initiative, promote industries and further the development of social responsibility;

WHEREAS, as it appears from the report of the Bill of Rights Committee, from the debates in the Constitutional Convention and from the explanations to the people with reference to Section 5 of Article II of the Constitution of the Commonwealth of Puerto Rico, the people of Puerto Rico and their representatives in the Constitutional Convention, in establishing compulsory education in the elementary public schools never had the purpose of making such obligation applicable to persons receiving elementary education in private schools;

WHEREAS, as it appears from the report of the corresponding Committee of the Constitutional Convention, from the debates in the Convention and from the public explanations relative to Article VII of the Constitution of the Commonwealth of Puerto Rico, it was always understood by the people of Puerto Rico and by their representatives in the Constitutional Convention that amendments to the Constitution would have to be adopted in conformity with the fundamental provisions embodied in the Compact agreed upon between the people of Puerto Rico and the Congress of the United States.

WHEREAS, it behooves this Constitutional Convention to accept or reject, in behalf of the people of Puerto Rico, the stipulations contained in Public Law 447;

WHEREAS, in the judgment of this Constitutional Convention, the said stipulations should be accepted, to the end that the Constitution of the Commonwealth of Puerto Rico may take effect immediately according to its own terms.

NOW, THEREFORE, BE IT RESOLVED BY THIS CONSTITUTIONAL CONVENTION OF PUERTO RICO in the exercise of its authority and in the fulfilment of its obligation toward the people of Puerto Rico:

FIRST: To accept, in behalf of the people of Puerto Rico, the conditions of approval of the Constitution of the Commonwealth of Puerto Rico proposed by the Congress of the United States, as set forth in Public Law 447.

SECOND: That a certified copy of this Resolution be transmitted by the President of this Convention of the Governor of Puerto Rico so that the latter may proceed to proclaim the effectiveness of the Constitution of the Commonwealth of Puerto Rico according to the terms embodied in this Resolution.

THIRD: To ask the Governor of Puerto Rico to notify the President of the United States, for his information and

that of the Congress, of the approval of this Resolution by the Constitutional Convention of Puerto Rico.

FOURTH: To request of the Governor of Puerto Rico to call the Legislature of Puerto Rico to special session, once the effectiveness of the Constitution of the Commonwealth of Puerto Rico shall have been proclaimed, with the recommendation that the said legislative body propose the necessary amendments to Section 5 of Article II and Section 3 of Article VII which shall be submitted to the people of Puerto Rico at the next general election, so that, if approved by the people, the said amendments may form a part of the Constitution of the Commonwealth of Puerto Rico, and Section 5 of Article II and Article VII of the said Constitution may take force and effect.

(Approved in the plenary session held July 10, 1952.)

PROCLAMATION: ESTABLISHING THE COMMONWEALTH OF PUERTO RICO

WHEREAS, the Constitutional Convention of Puerto Rico has formally notified me of its approval on July 11, 1952, of Resolution No. 34;

WHEREAS, this Resolution constitutes the final step for ratification of the Constitution of the Commonwealth of Puerto Rico, which Constitution was overwhelmingly approved by the people in the referendum held on March 3, 1952;

WHEREAS, Section 10 of Article IX of the Constitution of the Commonwealth of Puerto Rico provides that the Constitution shall take effect when the Governor of Puerto Rico so proclaims;

NOW, THEREFORE, I LUIS MUÑOZ MARIN, Governor of Puerto Rico, by the will of the people, do solemnly proclaim, by virtue of the authority vested in me by the aforesaid section, that the Constitution of the Commonwealth of Puerto Rico shall take effect on this twenty-fifth day of July, 1952, and do exhort all my fellow citizens, without

distinction, to defend and to honor, today and forever, the Constitution which a democratic and great-hearted people have forged for themselves and by which they have attained their political majority in the form of the Commonwealth of Puerto Rico.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this twenty-fifth day of July, nineteen hundred and fifty-two.

(SEAL)

LUIS MUÑOZ MARIN,
Governor.

Promulgated pursuant to law, this twenty-fifth day of July, 1952.

N. ALMIROTY,
Acting Executive Secretary of Puerto Rico.

(Administrative Bulletin No. EG-188, July 25, 1952.)

§ 1283.—NOTICE OF APPEAL

An appeal is taken by filing with the secretary of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney.—(Code Civil Proc., 1933, § 296.

§ 1431.—SERVICE OF NOTICE OR OTHER PAPER

The service of notice or other paper may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them,

between the hours of eight in the morning and four in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, inclosed in an envelope, into the post office, directed to such attorney.

* * *

(Code Civil Proc., 1933, § 320.)

SECTION 16 8(a) OF THE INTERNAL REVENUE ACT OF PUERTO RICO, NO. 85, APPROVED AUGUST 20, 1925 AS AMENDED BY ACT NO. 425 APPROVED MAY 14, 1947, 13 L.P.R.A., SECTION 1040

§ 1040.—VEHICLES NOT SELF-PROPELLING

On all vehicles not self-propelling, excepting vehicles expressly manufactured to be drawn by human or animal power, and cars or carts expressly designed to be drawn by mosquito tractors, "jeeps," and other similar vehicles for the hauling of agricultural products within the farm, sold, transferred, or used or consumed in, or introduced into, Puerto Rico, a tax of (10) per cent on the selling price in Puerto Rico; PROVIDED, That trailers and semi-trailers sold, transferred, or used or consumed in, or introduced into, Puerto Rico, shall be subject to a tax fifteen (15) per cent on the selling price in Puerto Rico.—Aug. 20, 1925, No. 85, p. 584, §16, subd. 8a, added May 12, 1943, No. 116, p. 334, §2; May 8, 1945, No. 95, p. 332, §1; Dec. 26, 1946, No. 8, p. 102, §1; May 14, 1947, No. 425, p. 862, §1, eff. May 14, 1947.

(No. 59)

(Approved June 10, 1955)

To amend subdivisions 8 and 8a of section 16 of Act No. 85, approved August 20, 1925, known as "Internal Revenue Law of Puerto Rico", as amended.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1. Subdiivisions 8 and 8a of section 16 of Act No. 85, approved August 20, 1925, known as "Internal Revenue Law of Puerto Rico", as amended, are hereby amended to read as follows:

"Section 16. . . .

8a. VEHICLE NOT SELF-PROPELLED: On all vehicles not self-propelling, including home trailers, but not including trailers or semi-trailers, neither vehicles expressly manufactured to be drawn by human or animal power, nor cars or carts expressly designed to be drawn by mosquito tractors, jeeps, and other similar vehicles for the hauling of agricultural products within the farm, sold, transferred, used, consumed, or acquired in, or introduced into, Puerto Rico, a tax of ten (10) per cent on the selling price in Puerto Rico."

Section 2. This act shall take effect the day next following its approval, but its effects shall be made retroactive to November 1, 1954.

Approved June 10, 1955.